REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

DASH ENGINEERING PHILIPPINES, INC., ***Petitioner,***	**C.T.A. CASE NO. 7243**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** OCT 0 4 2007

x -- x

D E C I S I O N

PALANCA-ENRIQUEZ, J.:

Another case involving refund of creditable input VAT attributable to zero-rated sales. Pursuant to *Section 112 (A) of the National Internal Revenue Code of 1997* (hereafter "NIRC of 1997")*, as amended*, a VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. To do so, however, petitioner must be able to show that it complied with all the requisites prescribed by law. Failure to show proof of compliance with the requirements provided by law is fatal to one's claim for refund or credit.

THE CASE

This is a Petition for Review filed by Dash Engineering Philippines, Inc. (hereafter "petitioner") praying for a refund in the aggregate amount of P2,149,684.88, representing the VAT input taxes paid or incurred on its purchases of goods and services attributable to its zero-rated sales for the period January 1, 2003 to June 30, 2003.

THE FACTS

In their "Joint Stipulation of Facts and Issues", the parties stipulated as follows:

> "1. Petitioner is a corporation organized and existing under Philippine laws, with current address at 8th - 10th Floors, PIPC – Dash Engineering Science Building, Asia Town, IT Park, Cebu City.
>
> 2. Respondent Commissioner of Internal Revenue is the official of the Republic of the Philippines charged with the duty, among others, of acting on claims for tax refund or tax credit. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.
>
> 3. Simultaneous with the filing of the petition, petitioner paid to the Honorable Court of Tax Appeals, the docket and other lawful fees in postal money order in the total amount of P13,378.43 as required under Section 1, Rule 17 of the Rules of the Court of Tax Appeals, as amended.

aul

4. Petitioner is a VAT-registered entity engaged in the export sales of computer-aided engineering and design. It is a corporation duly registered with the Securities and Exchange Commission authorized to do business in the Philippines, and presently registered with the Philippine Economic Zone Authority (PEZA) as an ecozone IT (Export) Enterprise.

5. Petitioner is a VAT [Value Added Tax] registered entity with VAT Registration Certification No. 94-800-000340 issued on 13 June 1984.

6. Petitioner filed its VAT returns for the period 1 January 2003 to 30 June 2003 with the Bureau of Internal Revenue.

7. On August 9, 2004, petitioner filed a claim for tax credit/refund for the amount of P2,149,684.88.

8. As of date, respondent has not yet acted upon the claim for tax refund/tax credit filed by petitioner."

In his Answer, respondent, by way of special and affirmative defenses, alleged that the amount of P2,149,684.88 being claimed by petitioner representing the input taxes it paid for the 1st and 2nd quarters of the year 2003 is not properly documented; in an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit; petitioner must show that it complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit; and claims for refund are construed strictly against the

oe

claimant for the same partake of the nature of exemption from taxation, and such, they are looked upon with disfavor.

Petitioner presented Loraine Joy Y. Singculan, its Accounting Staff, and Yukihiro Mimura, its President, as witnesses, and documentary evidence, marked as Exhibits *"A"* to *"Y"*, inclusive of their submarkings, which were all admitted by the Court, after petitioner filed a "Motion for Reconsideration" of the Resolution dated May 26, 2006.

On the other hand, respondent submitted the case for decision, without presenting any evidence.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice.

However, on October 10, 2006, petitioner filed a "Motion to Allow Reception of Additional Evidence for Petitioner And To Defer Submission of Memorandum", which the Court granted in a Resolution dated December 4, 2006. Thus, petitioner presented Milagros Remillano Madayag of Mizuho Corporate Bank Ltd., Manila Branch, as additional witness, and documentary evidence, additionally marked as *Exhibits "Z"* to *"Z-7", "AA", and "AA-1"*, which were all admitted by the Court.

Both parties having filed their respective memorandum, the case was deemed submitted for decision.

Hence, this decision.

ISSUE

As stipulated upon by the parties, the sole issue for this Court's consideration is:

> WHETHER OR NOT PETITIONER IS ENTITLED TO A TAX REFUND/TAX CREDIT OF ITS UNUTILIZED VALUE-ADDED TAX INPUT TAXES ON ITS PURCHASES OF GOODS AND SERVICES.

Petitioner's Arguments

Petitioner contends that pursuant to *Sections 110 and 112 of the NIRC of 1997, as amended*, it is entitled to a tax refund/tax credit of its unutilized value-added tax input taxes on its purchases of goods and services; it has complied with all the requirements for VAT refund or credit since it is a VAT-registered entity, its export sales are zero-rated; it complied with the invoicing requirements under *Sections 113 and 237 of the NIRC of 1997, as amended*, and *Section 4.108-1 of Revenue Regulations 7-95*; its VAT input taxes are duly supported by VAT invoices and official receipts which have not been offset against any output taxes; and its export proceeds had been inwardly remitted in accordance with applicable banking regulations.

THE RULING OF THE COURT

The petition is partly meritorious.

aac

In the recent case of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007*, the Supreme Court laid down the requisites to be entitled to a refund or issuance of a tax credit certificate of input taxes attributed to zero-rated sales, as follows:

> "Under Sections 106 (A)(2)(a)(1) in relation to 112(A) of the Tax Code, a taxpayer engaged in zero-rated or effectively zero-rated transactions may apply for a refund or issuance of a tax credit certificate for input taxes paid attributable to such sales upon complying with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated (like export sales) or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-rated sales under Section 106(A)(2)(a)(1) and (2), Section 106(B), and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations. It is added that, 'where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly or entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of the sales."

Pursuant to the above ruling, to be entitled to a refund or issuance of a tax credit certificate of input taxes attributable to zero rated sales, petitioner must comply with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-rated sales the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations.

The first and fifth requisites being interrelated will be discussed jointly.

Records show that out of P62,787,889.17 declared as zero-rated sales by petitioner, only the amount of P62,277,136.49 consists of direct export sales to Japan by the petitioner, which will qualify for zero-rating. The amount of 138,028,531.00 Japanese Yen or P62,277,136.49 in Philippine Peso covering petitioner's sales for the period of January 1, 2003 to June 30, 2003 was duly substantiated. Petitioner presented Sales Invoices *(Exhibits "H", "I", "J", "K", "L", "O", "P", "Q", "R", "S", "T", "U", "V", and "W")* and Official Receipts *(Exhibits "H-1", "I-1","J-1", "K-1", "L-1", "O-1", "P-1", "Q-1", "R-1", "S-1", "T-1", "U-1", "V-1", and "W-1")*, which are all zero- rated. The proceeds of the said export sales were inwardly remitted to petitioner, as evidenced by the Certification of the Vice President and Manager for Operations 2 of Mizuho Corporate Bank, Ltd

OAL

– Manila Branch *(Exhibit "Z")*, and copies of petitioner's Bank Statements with Mizuho Corporate Bank, Ltd. *(Exhibits "Z-1" to "Z-7")*, and Credit Advices *(Annexes "G-6", "G-10", "G-13", "G-25", "G-29" "G-38", "G-43" and "G-46" of the Petition for Review)*.

However, with regard to the amount of 8,304 US Dollars or its Philippine Peso equivalent to P510,752.68, a perusal of the Sales Invoices *(Exhibits "M" and "N")* and Official Receipts *(Exhibits "M-1" and "N-1")* shows that said amount does not pertain to direct export sales. Petitioner failed to substantiate that said sales were made to entities that are zero-rated. Hence, this Court cannot consider them as zero-rated sales.

In this regard, *Section 106 (2) of the NIRC of 1997, as amended*, provides as follows:

> "SEC. 106. Value-added Tax on Sale of Goods or Properties. –
>
> xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) Export Sales. – The term 'export sales' means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in

ali

accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;

(2) Sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

(4) Sale of gold to Bangko Sentral ng Pilipinas (BSP); and

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

xxx xxx."

Corollary thereto, *Section 108 (B) of the NIRC of 1997, as amended*, provides:

"SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –

xxx xxx

(B) Transactions Subject to Zero Percent (0%) Rate. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for

ove

in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

(4) Services rendered to vessels engaged exclusively in international shipping; and

(5) Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production."

As regards the second requisite, the Court finds that the same was complied with by petitioner. Petitioner is a duly registered VAT entity with Tax Identification No. 800-001-943-838-V, as shown in its BIR Certificate of Registration, bearing RDO Control No. 94-800-000340 *(Exhibit "A")*.

As to the third requisite, the Court finds that petitioner's claims for refund for the first and second quarters of 2003 were filed within the two-year prescriptive period.

It is settled that the two-year prescriptive period for filing a claim for refund/credit input VAT on zero-rated sales is counted from the date of filing of the return and payment of the tax due *(Atlas Consolidated Mining Dev't. Corp. vs. Commissioner of Internal Revenue, G.R. Nos. 141104 and148763, June 8, 2007),* which should be made within 25 days following the close of each taxable quarter *(Section 114 of the NIRC of 1997, as amended).*

A perusal of the records shows the following dates pertinent to the case, to wit:

Period Covered	Date of Filing (Original Return w/ BIR)	Date of Filing (Amended Return w/ BIR	Date of Filing (Application w/ BIR)	Date of Filing (Case w/ CTA)
1st Quarter, 2003	April 25, 2003 *(Exhibit "E-2")*	July 24, 2004 *(Exhibit "E1-5", CPA Report)*	August 9, 2004 *(Exhibit "B-1")*	April 26, 2005 *(Petition for Review*
2nd Quarter 2003	July 23, 2003 *(Exhibit "E1-9", CPA Report)*	July 24, 2004 *(Exhibits "E-4" and "E1-11", CPA Report)*	August 9, 2004 *(Exhibit "B-1")*	April 26, 2005 *(Petition for Review)*

The above table readily shows that petitioner's administrative claims for refund of input VAT on its zero-rated sales for the first and second quarters of 2003 were both filed within the prescriptive period. Likewise, petitioner's judicial claim for refund for the first and second quarters of 2003 was filed within the two-year prescriptive period. Since petitioner filed its amended quarterly VAT returns for the first and second quarters of 2003 on July 24, 2004, petitioner had until July 24, 2006 within which to file its judicial claim for refund. Records show that petitioner filed it judicial claim for refund with this Court on April 26,

ael

2005, thus, its judicial claim for refund was filed within the prescriptive period.

Going to the fourth requisite, We shall now determine whether petitioner was able to substantiate with proper documents its reported unutilized input VAT for the first and second quarters of 2003 in the amount of P2,149,684.88.

In his report dated February 17, 2006 *(Exhibit "Y")*, the commissioned Independent CPA, Benjamin C. Hortelano, noted the following exceptions, in so far as petitioner's input VAT claim of P2,149,684.88 is concerned:

Exceptions/Findings	Exhibit No., CPA Report	Amount of Input VAT
a) Supporting documents not in the name of the Company	"F-1"	P16,884.64
b) Exceptions supported only by tape receipts	"F-2"	15,061.69
c) Expenses not incurred within the period	"F-3"	18,881.24
d) Supporting documents are not VAT registered	"F-4"	97,082.84
e) ORs not on file for the sale of service	"F-5"	15,379.48
f) Invoices not on file for purchase of goods	"F-6"	20,470.00
Total		P183,759.89

(Exhibit "Y")

aal

After a careful examination of the CPA report and verification of the supporting invoices and receipts covering petitioner's domestic purchases of goods and services *(Exhibits "C1-1" to "C1-89", "C2-1" to "C2-101", "C3-1" to "C3-117", "C4-1" to "C4-111", "C5-1" to "C5-121" and " C6-1" to "C6-163" of Exhibit "Y"),* this Court agrees with the independent CPA that the total input VAT of P183,759.89 excepted by him should be disallowed by this Court from petitioner's claim.

In addition to the disallowed input VAT of P183,759.89, the Court finds that the amount of P808,828.73 *(detailed breakdown, attached as Annex "A" of this Decision)* should also be denied for the following reasons:

	This Court's Findings	Input VAT
a)	Input VAT on purchases of goods supported by zero rated invoice and dated not within the period of claim;	P1,418.18
b)	Input VAT on purchases of goods dated not within the period of claim;	327.27
c)	Input VAT on purchases of goods without invoices and with "NV" Official Receipts altered to VAT;	17,589.08
d)	Input VAT on purchases of services supported by "TAN" VAT Official Receipts;	755,080.05
e)	Input VAT on purchases of goods/services supported by invoices/Official Receipts not in the name of the petitioner;	5,721.71
f)	Supporting documents show	

avl

that the purchases pertain to automobiles, which should be excluded from the claim for refund of input VAT, pursuant to Section 4.104-1 of Revenue Regulations No. 7-95;	28,692.44
Total Input VAT Denied	P808,828.73

In sum, of the total input VAT claim of P2,149,684.88, only the amount of P1,157,096.26, as computed below, is duly supported by VAT invoices and/or receipts, in accordance with *Section 4.104-5 of Revenue Regulations No. 7-95*, in relation to *Sections 110(A) and 113 of the NIRC of 1997, as amended*:

Amount of Input VAT Claim		P2,149,684.88
Less: Disallowances		
a) Per CPA's Report	P183,759.89	
b) Per this Court's findings	808,828.73	
Total Disallowances		P992,588.62
Validly Supported Input VAT		**P1,157,096.26**

Records further show that the substantiated input VAT of P1,157,096.26 was not applied against any output VAT during the first and second quarters of 2003 *(Exhibits "E-2", "E-4" and Exhibits "E1-5" and "E1-11" of Exhibit "Y")*. Also, petitioner did not file a claim of the said input VAT from other government agencies, as evidenced by the Certification dated May 18, 2004, issued by the Executive Director of the Department of Finance *(Exhibit "C")*.

Oul

For all the foregoing, this Court, therefore, concludes that petitioner has sufficiently proven its entitlement to a refund or issuance of a tax credit certificate, representing unutilized excess input taxes, which are directly attributable to its zero-rated sales for the period January 1, 2003 to June 30, 2003, but in the reduced amount of P1,147,683.78, computed as follows:

Substantiated Zero-rated Sales	P62,277,136.49
Divided by Total Zero-Rated Sales per Amended VAT Returns	62,787,889.12
Multiplied by Validly Supported Input VAT	1,157,096.26
Input VAT Attributable to Substantiated Zero-Rated Sales	**P1,147,683.78**

WHEREFORE, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **ONE MILLION ONE HUNDRED FORTY SEVEN THOUSAND SIX HUNDRED EIGHTY THREE and 78/100 PESOS** (P1,147,683.78), representing the unutilized input VAT incurred for the months of January to June 2003.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

Additional Input VAT Disallowed Per This Court's Verification
First and Second Quarters of 2003

	This Court's Findings	Exhibit No., CPA Report	Amount of Input VAT	Total Amount of Input VAT
a)	Input VAT on purchase of goods supported by zero rated invoice and dated not within the period of claim			
	1. Mcdon Industrial Trade	C1-40		P1,418.18
b)	Input VAT on purchases of goods dated not within the period of claim			
	1. Vital One Enterprise, Inc.	C1-84	P190.91	
	2. WES Automation Corp.	C1-89	136.36	
Total				P327.27
c)	Input VAT on purchases of goods without invoices and with "NV" Official Receipts altered to VAT			
	1. Pink Ribbon Bakeshop, Inc.	C1-66	P1,240.91	
	2. Pink Ribbon Bakeshop, Inc.	C1-67	805.00	
	3. Pink Ribbon Bakeshop, Inc.	C1-68	830.45	
	4. Pink Ribbon Bakeshop, Inc.	C1-69	712.73	
	5. Pink Ribbon Bakeshop, Inc.	C2-68	735.00	
	6. Pink Ribbon Bakeshop, Inc.	C2-69	846.36	
	7. Pink Ribbon Bakeshop, Inc.	C2-70	855.91	
	8. Pink Ribbon Bakeshop, Inc.	C3-81	719.09	
	9. Pink Ribbon Bakeshop, Inc.	C3-82	413.64	
	10. Pink Ribbon Bakeshop, Inc.	C3-83	906.82	
	11. Pink Ribbon Bakeshop, Inc.	C3-84	1,021.36	
	12. Pink Ribbon Bakeshop, Inc.	C3-85	871.82	
	13. Pink Ribbon Bakeshop, Inc.	C4-78	1,177.27	
	14. Pink Ribbon Bakeshop, Inc.	C4-79	1,040.45	
	15. Pink Ribbon Bakeshop, Inc.	C4-80	680.91	
	16. Pink Ribbon Bakeshop, Inc.	C5-76	2,310.00	
	17. Pink Ribbon Bakeshop, Inc.	C6-118	801.82	
	18. Pink Ribbon Bakeshop, Inc.	C6-119	1,005.45	
	19. Pink Ribbon Bakeshop, Inc.	C6-120	614.09	
	Total			P17,589.08
d)	Input VAT on purchases of services supported by "TAN" VAT Official Receipts			
	1. WT Construction, Inc.	C3-116	P359,561.93	
	2. WT Construction, Inc.	C6-162	395,518.12	
	Total			P755,080.05
e)	Input VAT on purchases of goods/services supported by invoices/Official Receipts not in the name of the petitioner			
	1. Electroworld	C3-31	P117.73	
	2. Pan Pacific Travel Corp.	C3-60	321.82	
	3. BPI/MS Insurance Corporation	C6-12	3,436.20	

ave

	4. BPI/MS Insurance Corporation	C6-14	1,845.96	
	Total			P5,721.71
f)	Supporting documents show that the purchases pertain to automobiles, which should be excluded from the claim for refund of input VAT, pursuant to Section 4.104-1 of Revenue Regulations No. 7-95			
	1. BOT Lease & Finance Phils., Inc.	C4-6, C4-7, C4-8, & C4-9	P1,871.07	
	2. BOT Lease & Finance Phils., Inc.	C4-10, C4-11, & C4-12	2,361.20	
	3. BOT Lease & Finance Phils., Inc.	C4-13, C4-14, C4-15, & C4-16	2,888.73	
	4. BOT Lease & Finance Phils., Inc.	C5-5, C5-6, and C5-7	16,474.56	
	5. BOT Lease & Finance Phils., Inc.	C5-9, C5-10 & C5-11	1,837.18	
	6. BOT Lease & Finance Phils., Inc.	C6-8, C6-9, C6-10 & C6-11	3,259.70	
	Total			P28,692.44
Total Input VAT Disallowed Per Court's Findings				**P808,828.73**